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| 10/679,972      | 10/06/2003  | Peter Irrgang        | 05727-00021         | 1809             |

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EXAMINER

ROWAN, KURT C

| ART UNIT | PAPER NUMBER |
|----------|--------------|
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3643

DATE MAILED: 04/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/679,972

Applicant(s)

IRRGANG ET AL.

Examiner

Kurt Rowan

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☒ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_

## **DETAILED ACTION**

### ***Drawings***

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the top and sides of the fixed ring, the semi-cylindrical body having side surfaces, the convex trailing top and side edges must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### ***Specification***

2. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: the up locking reel lock.

### ***Double Patenting***

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double

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patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-13 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-6 of U.S. Patent No.

6,629,382. Although the conflicting claims are not identical, they are not patentably distinct from each other because they are obvious in view of the previously patented claims since the same structural elements are recited. For example in claims 1, 15 and 13 of the present invention recites a cowl having a body, a fishing rod handle with a reel seat and fixed reel lock and a movable reel lock. Claim 1 of the '382 patent recites a fishing rod having a handle with a reel seat having movable and fixed rings to mount a fishing reel to the rod. Claim 1 of the '382 patent recites a sleeve on the rod overlapping the reel seat which corresponds to the semi-cylindrical body having top and side surfaces in the present invention.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 2-4 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 2 recites "said top and side surfaces". Does the top refer to the top of the semi-cylindrical body or the top of the fixed ring or the reel

seat body ? It appears to refer to the semi-cylindrical body, but the fixed ring also recites a top as does the reel seat body. Applicant should clearly refer to which structure is being recited when using terms like "top" and "sides"

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sugamata in view of Pontis and Yamamoto et al.

The patent to Sugamata shows a fly fishing assembly having an elongated rod, a reel seat body on one end of the rod for receiving a reel, a reel on the bottom. The reel seat body, an up locking reel lock for locking one end of the reel on the reel seat body, and a handle on the rod including an elongated sleeve on the rod as shown by Sugamata. Further, Sugamata shows the elongated sleeve having a smooth bulbous central portion, a flaring end, a first smooth waisted portion between the central portion and a flaring rear end. Sugamata shows the flaring rear end of the sleeve inhibiting rearward sliding of a user's hand from the handle during a cast as shown in Fig. 1. Sugamata does not show a semi-cylindrical cowl on the rear end of the sleeve partially surrounding the top and sides of the rod in the vicinity of the reel. Sugamata does not show the cowl having a top and side surfaces forming a continuation of the flaring end of the rod handle. Sugamata does not show a rear flange extending around the bottom

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of the handle, a convex bottom side edges , a convex trailing end, or a sleeve overlapping the reel seat body for retaining a second end of the reel on the reel seat body. The patent to Pontis shows a fishing rod having a handle with a semi-cylindrical cowl having a top and side surfaces forming a continuation of the flaring end as shown in Fig. 2. Pontis shows the cowl on the rear end of a sleeve partially surrounding the top and sides of a fishing rod in the area of the reel. Pontis shows the cowl including a flange on a bottom rear end surface adjacent the reel and cowl edges as recited noting Figs. 1, 2, 5, and 6. In reference to claims 1, 5, 9, 13, it would have been obvious to provide Sugamata with a semi-cylindrical cowl as shown by Pontis to provide extended protection and comfort to the hand of a user. The patent to Yamamoto shows a fishing rod and reel having an elongated grip 14 overlapping the reel seat body in order to retain the reel foot on the reel seat assembly. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide Sugamata with an overlapping elongated grip as shown by Yamamoto to retain the second end of the reel. In reference to claims 2, 6, and 10, Pontis shows the top and side surfaces having convex trailing top and side edges. In reference to claims 3, 7 and 11, Pontis shows a flange between the side edges adjacent the fishing reel to prevent sliding of a users hand against the reel. In reference to claims 4, 8 and 12, Pontis shows the cowl to be removably joined with the rod handle. In reference to claim 13, Pontis does not disclose that the flange is removably attached with the cowl attachment, but it would have been obvious to make the flange removable with respect to the cowl attachment. See *In re Dulberg*, 129 USPQ 348.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kurt Rowan whose telephone number is 703 308-2321. The examiner can normally be reached on Monday-Thursday 6:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on 703 308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Kurt Rowan  
Primary Examiner  
Art Unit 3643

KR